

2011 WL 2098643 (Ga.Super.) (Trial Pleading)
Superior Court of Georgia.
Cobb County

GOLDEN LIVING, INC. d/b/a Golden Living Center Kennestone, Petitioner/Plaintiff,

v.

Vicki WEAVER, Respondents/Defendants.

No. 11104844.
May 19, 2011.

Complaint for Damages

Hall Booth Smith & Slover, P.C., [T. Andrew Graham](#), Georgia Bar No. 304777, [Brittany H. Cone](#), Georgia Bar No. 488550, Attorneys for Plaintiff Golden Living, Inc., 191 Peachtree Street, Suite 2900, Atlanta, Georgia 30303, Telephone: (404) 954-5000, Facsimile: (404) 954-5020.

COMES NOW Golden Living, Inc. d/b/a Golden Living Center- Kennestone, a Georgia corporation and Plaintiff in the above-styled matter (hereinafter, “Plaintiff” or “GLC”) by and through its attorneys, and presents its Complaint for damages against Defendant Vicki Weaver (hereinafter “Defendant”), showing this Court as follows:

JURISDICTION AND VENUE

1.

Plaintiff Golden Living Inc. d/b/a Golden Living Center - Kennestone hereby subjects itself to the jurisdiction of this Court.

2.

Defendant Vicki Weaver is a Georgia resident and is domiciled at 3609 Bancroft Main, Kennesaw, Cobb County, Georgia 30144. Defendant can be served with process by service at 3609 Bancroft Main, Kennesaw, Cobb County, Georgia 30144.

3.

Upon proper service of process, and based on the foregoing, jurisdiction is proper in this Court. Venue is proper in this Court under [O.C.G.A. § 9-10-30](#).

FACTS

4.

On or about September 25, 2010, Defendant Vicki Weaver, as Statutory Durable Power of Attorney, made application on behalf of her mother, Delores Williams (“Ms. Williams”) for admission to Plaintiff Golden Living Center- Kennestone, a skilled nursing facility located at 613 Roselane Street, Marietta, Georgia 30060.

5.

On or about September 25, 2010, Plaintiff and Defendant entered into a written Admission Agreement (“Agreement”). Pursuant to the Agreement, Plaintiff agreed to provide Defendant's mother with skilled nursing care and services in exchange for Defendant Weaver's promise to pay a specific monetary fee from her mother's resources and to cooperate fully with Plaintiff in “applying for all applicable private or governmental benefits to pay for [Ms. Williams'] care...” A true and correct copy of the Agreement is attached hereto as Exhibit “A”.

6.

Additionally, pursuant to the Agreement, Defendant promised to “provide [Plaintiff] with all information necessary to submit claims and obtain payment for [Ms. Williams'] care.” See Exhibit “A.”

7.

Defendant holds a Statutory Durable Power of Attorney executed by Delores Williams on June 30, 2008. See Exhibit “B”.

8.

Under the terms of the Statutory Durable Power of Attorney, Defendant was charged with acting “for [Delores Williams] in any lawful way with respect to... (A). real property transactions, (B). tangible personal property transactions, ...(E). banking and other **financial** institution transactions., (J). personal and family maintenance, and (K). benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service.”

9.

Ms. Williams' care and treatment was paid for by Medicare up through and including November 17, 2008.

10.

Pursuant to the Power of Attorney, Defendant was provided an application for Medicaid to complete on Ms. Williams' behalf.

11.

The initial application was made to Medicaid on October 1, 2010. Although Defendant appeared for the meeting with the caseworker to provide verification to the Cobb County Department of Family and Children Services (“DFCS”), the application was denied on January 21, 2011, based on Defendant's failure to provide documents requested by DFCS to determine Ms. Williams' eligibility for the receipt of Medicaid benefits. See Exhibit “C”.

12.

A second application was made by the facility on February 25, 2011. However, this application was denied again for refusal to cooperate with the application process. See Exhibit “D.”

13.

An appeal of the denial and request for hearing was made to DFCS by the facility on April 29,2011 and again on May 16,2011.

14.

A teacher's pensions in Ms. Williams' favor in the amount of \$1,398 per month were, to Plaintiffs understanding, deposited into an account held either in Ms. Williams' name or jointly with Defendant. However, in the time of Ms. Williams' admission, only \$6,400 was paid toward her care and treatment on her behalf by Defendant.

15.

Plaintiff, through her Power of Attorney, transferred properties owned by Ms Williams to herself in 2007.

16.

Defendant also has reason to believe Defendant misappropriated pension monies for her own use.

17.

Plaintiff filed a report with Adult Protective Services ("APS"), who is in the process of investigating allegations of **financial exploitation**.

18.

Based on Defendant's obstinate refusal to provide Medicaid information necessary to approve Ms. Williams under its program as well as Defendant's refusal to pay the facility for Ms. Williams' care and treatment at Plaintiff facility pursuant to her fiduciary responsibilities as Power of Attorney for Ms. Williams, Plaintiff is injured **financially** as it is owed \$26,849.34 for care and treatment provided to Ms. Williams.

19.

Ms. Williams passed away on May 10,2011.

BREACH OF CONTRACT

20.

Paragraphs 1 through 19 are incorporated herein as if fully set forth.

21.

Plaintiff provided skilled nursing care and services to Defendant Weaver's mother in accordance with the terms and conditions of the Admission Agreement.

22.

Defendant Weaver breached the Agreement with Plaintiff when she failed to make timely and proper application for Medicaid benefits for her mother, and Defendant Weaver continues to breach the Agreement with Plaintiff by failing to cooperate and provide all documentation needed by the DFCS office to determine Ms. Williams' eligibility for Medicaid benefits.

23.

Defendant Weaver's breach of the Agreement with Plaintiff has irreparably harmed and continues to irreparably harm Plaintiff.

24.

Ms. Williams was without the capacity to make or communicate significant responsible decisions on her own regarding her **finances** and was therefore unable to make decisions regarding compensation to Plaintiff for the care and services that it rendered to her in accordance with the terms and conditions of the Agreement

25.

As a result of the failure of Defendant to abide by the terms and conditions of the Agreement, the application for Medicaid benefits for Ms. Williams was denied.

26.

The aforementioned breach of the Agreement with Plaintiff has caused and continues to cause irreparable harm to Plaintiff.

BREACH OF FIDUCIARY DUTY

27.

Paragraphs 1 through 26 are incorporated herein as if fully set forth.

28.

As Statutory Durable Power of Attorney for Ms. Williams, Defendant was in a confidential relationship with Ms. Williams.

29.

As Statutory Durable Power of Attorney for Ms. Williams, Defendant was under a fiduciary duty to act “for [Delores Williams] in any lawful way with respect to... (A). real property transactions, (B). tangible personal property transactions,...(E). banking and other **financial** institution transactions,... (J). personal and family maintenance, and (K). benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service.” See Exhibit “B”.

30.

By failing to act in a lawful way under the Statutory Durable Power of Attorney, Defendant prevented a complete Medicaid application from being made, which would result in a denial of Medicaid benefits.

31.

Additionally, by failing to act in a lawful way under the Statutory Durable Power of Attorney, Defendant withheld assets of Ms. Williams that should have been used to pay for her care and treatment at Plaintiff facility, and it is Defendant's belief that Defendant misappropriated these monies for her own use.

32.

Plaintiff was injured by Defendant's Breach of Fiduciary Duty in that it is now owed \$26,849.34 for care and treatment provided to Ms. Williams.

WHEREFORE: the Plaintiff prays for the following:

- a) That service of process be had upon Defendant,
- b) That this case be tried by jury on all issues so triable,
- c) That judgment be entered against the Defendant in the amount of \$26,849.34 with all costs and fees to be taxed against the Defendant,
- d) That Plaintiff be awarded attorneys fees, and
- e) That the Court grant the Plaintiff all other relief that it deems appropriate.

Respectfully submitted this 19th day of May, 2011.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.